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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION  
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12 METTEYYA BRAHMANA,  
13 Plaintiff,  
14 v.  
15 PHILIP CHARLES LEMBO, et al.,  
16 Defendants.  
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Case No.: C 09-0106 PVT

**ORDER SOLICITING FURTHER BRIEFING  
REGARDING EXHAUSTION OF  
ADMINISTRATIVE REMEDIES; AND  
FURTHER CONTINUING TRIAL SETTING  
CONFERENCE**

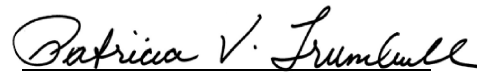
18 Currently pending before the court are Defendants' Motion to Dismiss Counts 1-5, 7 and 9 of  
19 Plaintiff's Fifth Amended Complaint (docket no. 189); and Defendants' Motion for Summary  
20 Judgment as to Counts 1-5, 7 and 9 of Plaintiff's Fifth Amended Complaint (docket no. 247).  
21 Having further reviewed the parties' briefs and the file herein, the court finds it appropriate to solicit  
22 further briefing on the issue of exhaustion of remedies. Therefore,

23 IT IS HEREBY ORDERED that, no later than November 30, 2010, the parties shall submit  
24 supplemental briefs addressing the timeliness of Plaintiff's submissions to the United States Equal  
25 Employment Opportunity Commission ("EEOC") in light of the joint filing agreement between the  
26 EEOC and the California Department of Fair Employment and Housing ("DFEH"). *See Green v.*  
27 *Los Angeles County Superintendent of Schools*, 883 F.2d 1472, 1476 (9<sup>th</sup> Cir. 1989) (noting that  
28 worksharing agreement between EEOC and DFEH provided that each agency was the agent of the

other for the purpose of receiving charges); *see also*, Phyllis W. Cheng, Cal. Attorney General's Office, Unlawful Discrimination—Your Rights and Remedies, Civil Rights Handbook (3<sup>rd</sup> Ed. 2001), p. 31 (“the EEOC and DFEH have a joint filing agreement so a complaint filed with one agency is automatically filed with the other as well”).<sup>1</sup> It appears this issue was not considered by District Judge Whyte in connection with Defendants’ motion to dismiss Plaintiff’s Fourth Amended Complaint. In a similar situation the Ninth Circuit reversed and remanded a case to give the district court an opportunity to consider whether a claim filed with the EEOC 204 days after the alleged discriminatory acts was timely despite the fact it had never actually been filed with the DFEH. *See, Peterson v. State of Cal. Dept. of Corrections and Rehabilitation*, 319 Fed.Appx. 679 (9<sup>th</sup> Cir. 2009).<sup>2</sup>

IT IS FURTHER ORDERED that the trial setting conference is CONTINUED to 2:00 p.m. on January 18, 2011.

Dated: 10/28/10

  
 PATRICIA V. TRUMBULL  
 United States Magistrate Judge

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<sup>1</sup> A copy of this handbook is available at [ag.ca.gov/civilrights/pdf/01cr\\_handbook.pdf](http://ag.ca.gov/civilrights/pdf/01cr_handbook.pdf).

<sup>2</sup> While this unpublished case is not binding precedent, it may be cited pursuant to CTA9 Rule 36-3(b).